

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/818,483 Confirmation No.: 9569
Applicant: E. Brian Finkelstein, et al.
Title: NEGOTIATED RIGHT EXCHANGE
Filed: March 27, 2001
Art Unit: 3692
Examiner: Lindsay Maguire

Atty. Docket: 00-8201
Customer No. 63710

CLARIFICATION OF INTERVIEW SUMMARY

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicant writes to clarify the Examiner's Interview Summary.

The Examiner's Interview Summary states:

Applicant stated that if new claim 190 were accepted, then he could live with a restriction of all of the other claims in reference to claim 190, and would file a divisional for the other claims in the future, if needed.

This statement is correct as far as it goes, but it is not a fully precise memorialization of Applicant's statement. Throughout the interview, Applicant's attorney requested that further examination proceed under the PTO's written rules and all requirements of administrative law that govern federal agencies, with no further deviation or improvisation by the Examiner. Applicant's attorney accepted that there is no procedural bar against restriction at this point, and that the rules do permit the Examiner to issue restriction requirements, but only so long as that restriction requirement complies fully with all requirements set forth in the MPEP and with all other applicable law. The statement reflected in the Examiner's Interview Summary should not be taken as Applicant's consent to a restriction that is not fully supported by law and the facts. Applicant does not waive any right or protection of any law, or authorize deviation from the requirements of law.

MPEP Chapter 800 requires showings of “independent and distinct” and “serious search burden.” Applicant notes that the Examiner’s papers have been silent on the three permissible alternatives for showing “serious search burden” set forth in MPEP § 808.02. In the interview, Applicant reiterated the request made several times in the papers, that further examination be complete and fully compliant with all procedural requirements. In the interview, Examiner Maguire indicated that she would use the form paragraphs in the MPEP and follow the instructions in the MPEP. Full agreement was reached between Applicant’s attorney and the Examiner around that principle. Applicant’s attorney pointed out that this would be the efficient way to proceed, so that Examiner and Applicant know what to expect from each other.

Applicant notes that the PTO has not sought clearance under the Paperwork Reduction Act for any modification of restriction practice since at least June 2006. Therefore, as explained in more detail at pages 34-35 of the “Supplementary Amendment” filed Jan. 23, 2009, no modification of restriction practice since this date can be enforced.

The Examiner’s Interview Summary states that “applicant ... stated that claims 1 and 138 are different.” Again, this statement is correct, but not fully precise. Applicant’s attorney agreed that claim 138 has a different scope than claim 14. However, no issue of “independent and distinct” for restriction purposes was discussed with respect to any claim.

Respectfully submitted,
HELIX FINANCIAL SYSTEMS, L.P.

Dated: February 27, 2009

By: /David E. Boundy/
Registration No. 36,461

Helix Financial Systems, L.P.
110 East 59th St.
New York, NY 10022
(212) 294-7848
(917) 677-8511 (FAX)